IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1318 OF 1996
IN
INSOLVENCY PETITION NO.7 OF 1994

Mulji Harshi Shah of Bombay,
Adult, Indian Inhabitant
residing at Raj Laxmi, 18/2,
Rafi Ahmed Kidwai Road,
Wadala, Bombay 400 031 and
carrying on business in the
name and style of M/s.Senior
Tyre Service as its partner
thereof at 99/101, New Chinch
Bunder Road, Bombay - 400 009 .. Appellant.

V/s.

Basant Kumar Jain, of Bombay
Adult, Indian Inhabitant
residing at C-210, Statrunjay
Seth Moti Shah Lane, Byculla,
Bombay - 400 027 .. Respondent.

Mr.K.P. Jain with Ms.Kavita Shah i/b. Mr.A.G. Shah for the appellant.

Mr.A.P. Kothari, Dy. Official Assignee is present.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 10TH AUGUST, 2005.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

Heard Mr.Kishore Jain, the learned counsel for the appellant.

2. This appeal is by the debtor who has been adjudicated insolvent vide order dated December 3, 1996. It is this order which is under challenge in

this appeal. From perusal of the impugned order, it appears that before the learned Insolvency Judge, a request was made on behalf of the debtor - appellant for some time to enable him to deposit the amount claimed by the petitioning creditor. However, the learned Insolvency Judge after recording the statement of the advocate for the appellant that the appellant has no case on merits, observed that there were 10 to 12 other creditors whose claims were still pending and that it should not be in general interest of the body of creditors to adjourn the matter. The learned Insolvency Judge, accordingly, made the insolvency petition absolute and adjudicated the appellant insolvent.

3. During the pendency of appeal the order of attachment and its publication remained stayed. However, the Official Assignee was directed to issue advertisement inviting claims and also directing the appellant to file schedule of assets to the Official Assignee with an undertaking not to dispose of his properties. The debtor - appellant has disclosed his assets to the Official Assignee and also furnished an undertaking not to dispose of his assets. The Assignee issued an advertisement inviting claims and we are informed by the Dy. Official Assignee who is present in the Court that 18 claims have been

received from various creditors amounting to Rs.2,15,775/- in all.

4. By our order dated August 1, 2005, we directed the appellant to deposit a sum of Rs.5,00,000/- with the Official Assignee within one week therefrom. The learned counsel for the appellant submits that in compliance of the order dated August 1, 2005, the amount of Rs.5,00,000/- has been deposited by the appellant with the Official Assignee. This is confirmed by the Dy. Official Assignee who is present in the Court. Mr.Kishore Jain, the learned counsel for the appellant submitted that the appellant is ready to deposit a further sum of Rs.2,00,000/- with the Official Assignee for discharge of his entire liability towards the creditors who have lodged their claim with the Official Assignee.

5. In the backdrop of the aforesaid facts, the question is whether the impugned order adjudicating the appellant as insolvent deserves to be set aside in appeal or not.

6. The facts that we have narrated above lead us to believe that whatever be the past conduct of the appellant, he now sincerely desires to discharge

his liability of all the creditors and does not want to live with a stigma of insolvent. He has already made full payment to the original petitioning creditor and also the substituted petitioning creditors. The claims of various other creditors which have now been received by the Official Assignee pursuant to the interim order during the pendency of this appeal are being scrutinised and enquired into by the Official Assignee. The learned counsel for the appellant submitted that even if the order of adjudication is set aside, this Court can clarify that that would not affect the scrutiny of the claims of various creditors received by the Official Assignee pursuant to the interim order passed in this appeal. Having taken all these aspects into consideration, we are of the view that it would be in the interest of justice if the impugned order is set aside and the insolvency petition is restored to file of the learned Insolvency Judge for fresh consideration of the matter. When the entire body of creditors is likely to be paid their due amount out of the funds available with the Official Assignee, in that event the adjudication of the appellant as insolvent may not be in the interest of justice.

7. We, accordingly, dispose of this appeal by the following order :

i) The appellant shall deposit a further sum of Rs.2,00,000/- with the Official Assignee within two weeks from today. The amount of Rs.2,00,000/- to be deposited by the appellant is in addition to the amount of Rs.5,00,000/- already deposited by him with the Official Assignee pursuant to the order dated August 1, 2005.

ii) The order dated December 3, 1996 impugned in the present appeal is set aside and the insolvency petition No.7 of 1994 is restored to file.

iii) The claims of various creditors received by the Official Assignee pursuant to the ad-interim order dated January 7, 1997 shall remain unaffected by our order setting aside of the order dated December 3, 1996. The Official Assignee will scrutinise and investigate these claims and make payment to these creditors out of the amount of Rs.7,00,000/- deposited by the appellant.

iv) The undertaking given by the appellant pursuant to the ad-interim order

dated January 7, 1997 of not disposing of his properties shall remain operative until disposal of the insolvency petition No.7 of 1994.

v) The Official Assignee shall invest the amount deposited by the appellant in fixed deposit of any nationalised bank initially for a period of one year renewable thereafter for the same period until the claims are scrutinised and investigated by him. However, the Official Assignee shall be at liberty to withdraw such sum that may be required to be paid to the creditors on the adjudication of the claim.

8. No costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)